

## PLAINTIFFS' COMPLAINT

**PARTIES**

6. Plaintiff is a natural person residing in Warrington, Pennsylvania, 18976.

7. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection company with corporate headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

9. Defendant is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

**PRELIMINARY STATEMENT**

11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

12. In particular, the FDCPA broadly enumerates several practices considered contrary to its stated purpose, and forbids debt collectors from taking such action. The substantive heart of the FDCPA lies in three broad prohibitions. First, a "debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt." 15 U.S.C. § 1692d. Second, a "debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. And third, a "debt collector may not use

1 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.  
2 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there  
3 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which  
4 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in  
5 connection with the collection of a debt.

6 13. In enacting the FDCPA, the United States Congress found that “[t]here is  
7 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
8 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,  
9 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress  
10 additionally found existing laws and procedures for redressing debt collection injuries to be  
11 inadequate to protect consumers. 15 U.S.C. § 1692b.

12 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
13 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection  
14 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt  
15 collection practices are not competitively disadvantaged, and to promote consistent State action  
16 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

#### 17 **FACTUAL ALLEGATIONS**

18 15. At all relevant times, Defendant was attempting to collect an alleged consumer  
19 debt from Plaintiff.

20 16. The alleged debt at issue arose out of transactions, which were primarily for  
21 personal, family, or household purposes.

22 17. Beginning on or around May 19, 2010 and continuing until August 2010,  
23 Defendant, its agents, employees, and servants, engaged in debt collection activities seeking  
24 payment from Plaintiff.

25 18. Defendant and its employee identified as “Eric Preston,” harassed the Plaintiff in

1 an attempt to collect the alleged debt.

2 19. Defendant and its employees harassed the Plaintiff by making continuous calls to  
3 her cellular phone number.

4 20. Plaintiff received phone calls and voice messages from Defendant on a number of  
5 occasions including but not limited to, numerous calls in the months of June 2010, July 2010,  
6 and August 2010 from the following phone number (877) 843-7429. The undersigned has  
7 confirmed that the number belongs to the Defendant.

8 21. Defendant placed repeated calls to Plaintiff's cellular phone almost every day,  
9 causing Plaintiff to receive, at times, more than two (2) collection calls a day.

10 22. Defendant placed repeated calls to Plaintiff's cellular phone almost every day,  
11 causing Plaintiff to receive, at times, more than twenty (20) collection calls a month.

12 23. On May 21, 2010, Defendant sent correspondence to Plaintiff seeking and  
13 demanding payment on an alleged debt. A true and correct copy of the May 21, 2010 letter is  
14 attached hereto as Exhibit "A".

15 24. Defendant's letter was confusing in that it referenced a principal amount owed of  
16 \$259.58 to a creditor identified as "TD BANK, N.A." and then indicated "REGARDING  
17 OVERDRAFT"; this reference was unclear and confusing to Plaintiff. See Exhibit A.

18 25. Defendant's letter also threatened: "Your account may be credit reported!" See  
19 Exhibit A.

20 26. Further, the letter stated Defendant "may report the account to all national credit  
21 bureaus" if Plaintiff failed to resolve the account with Defendant. See Exhibit A.

22 27. These statements were alarming to Plaintiff, who worried Defendant may report  
23 this alleged debt to the credit bureaus.

24 28. Defendant's threat that this debt could be reported to the national credit bureaus  
25 overshadowed Plaintiff's rights pursuant to the FDCPA to dispute the debt or seek verification.

29. Defendant's actions in attempting to collect the alleged debt were harassing, abusive and highly deceptive.

### CONSTRUCTION OF APPLICABLE LAW

30. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

31. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

32. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection

1 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of  
2 collection notices. Clomon, 988 F. 2d at 1318.

3  
4 **COUNT I**  
5 **DEFENDANT VIOLATED THE**  
6 **FAIR DEBT COLLECTION PRACTICES ACT**

7 33. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or  
8 more of the following ways:

- 9 a. Defendant violated of the FDCPA generally;
- 10 b. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in  
11 connection with the collection of an alleged debt;
- 12 c. Defendant violated § 1692d(5) of the FDCPA, when it caused the Plaintiff's  
13 telephone to ring repeatedly or continuously with the intent to harass, annoy  
14 or abuse Plaintiff;
- 15 d. Defendant violated § 1692e of the FDCPA by using false, deceptive, or  
16 misleading representations or means in connection with the collection of a  
17 debt;
- 18 e. Defendant violated § 1692e(10) of the FDCPA by using false representations  
19 or deceptive means to collect or attempt to collect a debt;
- 20 f. Defendant violated § 1692f of the FDCPA by using unfair and  
21 unconscionable means with Plaintiff to collect or attempt to collect a debt;
- 22 g. Defendant acted in an otherwise deceptive, unfair and unconscionable manner  
23 and failed to comply with the FDCPA.

24 WHEREFORE, Plaintiff, MICHELLE VELAS, respectfully pray for a judgment as follows:

- 25 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §  
1692k(a)(1);

- 1           b.     Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant  
2                     to 15 U.S.C. § 1692k(a)(2)(A);  
3           c.     All reasonable attorneys' fees, witness fees, court costs and other litigation  
4                     costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and  
5           d.     Any other relief deemed appropriate by this Honorable Court.  
6

7                                 **DEMAND FOR JURY TRIAL**

8           PLEASE TAKE NOTICE that Plaintiff, MICHELLE VELAS, demands a jury trial in  
9     this case.  
10

11                                 RESPECTFULLY SUBMITTED,  
12

13  
14     DATED: 4/15/11

15                                 KIMMEL & SILVERMAN, P.C..

16     By: \_\_\_\_\_

17                                 Craig Thor Kimmel  
18                                 Attorney ID # 57100  
19                                 Kimmel & Silverman, P.C.  
20                                 30 E. Butler Pike  
21                                 Ambler, PA 19002  
22                                 Phone: (215) 540-8888  
23                                 Fax: (877) 788-2864  
24                                 Email: [kimmel@creditlaw.com](mailto:kimmel@creditlaw.com)  
25



PO BOX 15630  
DEPT 99  
WILMINGTON DE 19850



Calls to or from this company may be monitored  
or recorded for quality assurance.

## NCO FINANCIAL SYSTEMS INC

507 Prudential Road, Horsham, PA 19044

877-843-7429  
OFFICE HOURS:  
8AM-9PM MON THRU THURSDAY  
8AM-5PM FRIDAY  
8AM-12PM SATURDAY  
May 21, 2010

54-8361



7BQV  
MICHELLE E VELAS

CREDITOR: TD BANK, N.A.  
ACCOUNT #: 250D  
REGARDING: OVERDRAFT  
PRINCIPAL: \$ 259.58  
INTEREST: \$ 0.00  
INTEREST RATE:  
COLLECTION CHARGES: \$ 0.00  
COSTS: \$ 0.00  
OTHER CHARGES: \$ 0.00  
TOTAL BALANCE: \$ 259.58

**Your Account May Be Credit Reported!**

Our records indicate that your balance of \$259.58 is due in full. It is our intention to work with you to resolve this collection account. However, subject to your dispute and validation rights provided below, if you fail to resolve this collection account, we may report the account to all national credit bureaus.

Returned checks may be subject to the maximum fees allowed by your state.

~~To assure proper credit, please put our internal account number 7BQV on your check or money order.~~

You may also make payment by visiting us online at [www.ncofinancial.com](http://www.ncofinancial.com). Your unique registration code is C1R7BQV9-9C3FLT1. To receive future notices for the account(s) by e-mail, visit [www.ncofinancial.com](http://www.ncofinancial.com) for details.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

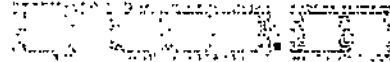
This is an attempt to collect a debt. Any information obtained will be used for that purpose. This is a communication from a debt collector.

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT (MAKE SURE ADDRESS SHOWS THROUGH WINDOW)

Account #	Total Balance
7BQV	\$ 259.58

MICHELLE E VELAS  
Payment Amount

\$



Check here if your address or phone number has  
changed and provide the new information below.

Make Payment To:



NCO FINANCIAL SYSTEMS  
PO BOX 15740  
WILMINGTON, DE 19850-5740



NCOP 1  
8361

0199001R7BQV30000000100000000000259587